

East Belden Corporation and Bartenders and Culinary Workers Union, Local 126, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. Case 20-CA-13585

23 August 1983

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND HUNTER

On 12 December 1978 the National Labor Relations Board issued a Decision and Order in this proceeding¹ which ordered Respondent, *inter alia*, to offer immediate and full reinstatement to employees and to make them whole for any loss of earnings and benefits resulting from Respondent's unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. On 24 November 1980 the United States Court of Appeals for the Ninth Circuit granted enforcement of the Board's Order.²

On 24 November 1982 the Acting Regional Director for Region 20 issued a backpay specification and notice of hearing alleging, *inter alia*, that a controversy had arisen over the amount of backpay due under the terms of the Board's Order and notifying Respondent that it must file a timely answer which must comply with the National Labor Relations Board Rules and Regulations, Series 8, as amended. On 9 December 1982 Respondent filed an answer to the backpay specification admitting certain paragraphs, generally denying certain paragraphs, and denying certain other paragraphs by means of a general denial which disputes the accuracy of the formula and the figures used in the computation of gross backpay, but fails to provide any specific alternative formula and/or figures for computing the amounts of gross backpay owed.

On 7 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Partial Summary Judgment with exhibits attached. He alleges that, except as to the issue of interim earnings, Respondent's answer failed to comply with the requirements of Section 102.54(b) and (c) of the Board's Rules and Regulations in that it failed to provide any alternative formula or to furnish appropriate supporting figures for computing the amounts owed. Subsequently, on 10 March 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Partial

Summary Judgment should not be granted. On 11 April 1983 Respondent filed a response to the Motion for Partial Summary Judgment wherein it asserts that its answer complies with the Board's Rules. Respondent specifically contends that, since its answer denied that the 8-week period chosen by the General Counsel to compute gross backpay is appropriate because it is during Respondent's busy season and inflated earnings would be derived therefrom, it is, therefore, implied in its answer that any other 8-week period that is not during its busy season would be appropriate and that all other matters flow from that determination. It moves that partial summary judgment should be denied.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Partial Summary Judgment

Section 102.54(b) and (c) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, states:

(b) *Contents of the answer to specification.*—The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, *setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.* (Emphasis supplied.)

¹ 239 NLRB 776. Chairman Dotson and Member Hunter note that they were not on the Board at the time the initial Decision and Order issued and that their participation at this stage of the proceedings is for institutional reasons.

² 634 F.2d 635.

(c) *Effect of failure to answer or to plead specifically and in detail to the specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

The backpay specification duly served on Respondent states that, pursuant to Section 102.54 of the Board's Rules and Regulations, "Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Backpay Specification within fifteen (15) days from the date of this Specification." The backpay specification states further that "[t]o the extent that such answer fails to deny allegations of the Backpay Specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true, and Respondent shall be precluded from introducing any evidence controverting them."

We agree with the General Counsel that Respondent's answer to the backpay specification does not conform to the above requirements as to those compliance matters within its knowledge. We reject Respondent's contention that its denial that the 8-week period chosen by the General Counsel is appropriate implies which alternative period it would use; it clearly does not. Thus, the answer asserts that certain allegations of the backpay specification concerning gross backpay are not correct while failing to set forth an alternative formula or

to furnish appropriate supporting figures for computing the amounts owed. Nor does Respondent provide an alternative formula or supporting figures in its response to the Notice To Show Cause. Certainly these matters are within the knowledge of Respondent and its failure to deny the specification in the manner required by Section 102.54(b) or to explain adequately its failure to do so requires that such allegations be deemed admitted to be true in accord with Section 102.54(c).

However, the General Counsel does not seek summary judgment with respect to the amounts of interim earnings contained in the specification, and we have held that a general denial of the allegations concerning interim earnings in a backpay specification is sufficient under Section 102.54 to raise an issue warranting a hearing.² Therefore, we shall order a hearing limited to the determination of the net interim earnings of the discriminatees. As stated above, we deem Respondent to have admitted all other allegations in the backpay specification to be true.

ORDER

It is hereby ordered that the General Counsel's Motion for Partial Summary Judgment as to all allegations in the backpay specification except the amounts of interim earnings contained therein be, and it hereby is, granted.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 20 for the purpose of arranging a hearing before an administrative law judge, limiting such proceeding to the determination of the amounts of interim earnings of the employees involved herein, and that the Regional Director be, and hereby is, authorized to issue notice thereof.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall apply.

² *Dews Construction Corp.*, 246 NLRB 945 (1979).